University of Regina

OVERCOMING SYSTEMIC DISCRIMINATION AGAINST ABORIGINAL PEOPLE IN SASKATCHEWAN:

Brief to the Indian Justice Review Committee and the Metis Justice Review Committee November 1991

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1. INTRODUCTION

We welcome the Saskatchewan Indian and Metis Justice Review. We are encouraged by this cautious invitation by the past Government of Saskatchewan to the people of this province to dialogue on Aboriginal justice issues. We are aware that the Review seeks solutions and community-based alternatives. This practical direction is appreciated. However, we must ask the Review, and the newly elected government which will receive it, to consider our fiduciary duties to build a new relationship with Saskatchewan's Indian and Metis peoples. This relationship must be based on openness, shared responsibility, public accountability and political will. We believe public, candid and sensitive hearings are essential to assure Aboriginal peoples of Saskatchewan equal and fair treatment. We believe that the Aboriginal Justice Review in Manitoba and the Alberta Task Force Committee public hearings provided opportunities for meaningful dialogue, which acknowledged the human cost of past policies of forced assimilation and marginalization. No matter what the cost is in fiscal terms, we must be willing to acknowledge, hear and understand the injustice forced upon Saskatchewan Indian and Metis peoples. We must be willing to take responsibility for past natural and social justice offenses against Aboriginal peoples. We cannot fulfill our duty to achieve justice with selected hearings and limiting discussion which meet exclusively the needs of the Justice Department.

Public inquiry hearings are the preferred way to ensure a candid, unprejudiced and non-biased investigation. The impact of systemic discrimination, community despair, economic and social dependency, cultural and community breakdown, are all being encountered by Aboriginal people in Saskatchewan. And, consequently, they are being faced by the Justice Department in the form of negative attitudes towards law and the legal process. We cannot honestly or sincerely examine the impact of the enforcement of dominant European laws, the victimization of Aboriginal communities and the over-incarceration of Saskatchewan Indian and Metis people in closed, sporadic processes.

To date, Saskatchewan has not had a particularly good record in so far as involvement in or support for Aboriginal justice. We cannot build a new relationship of trust, responsibility and equality without community and public discussion on how and why our current relations have evolved historically. We must be willing to see government and public complicity in past problems through the experience of First Nations and Metis peoples. Public ownership and responsibility for our past failures and future changes will not happen without widespread stakeholders' involvement.

2. OVER-INCARCERATION IN SASKATCHEWAN

There is much to be learned from a historical analysis of the over-incarceration of Aboriginal people in Saskatchewan. In the 1920s, 5 percent of all provincial male inmates and 20 percent of all provincial female inmates were Aboriginal people. By the 1970s the percentages had risen to 65 percent for males and 90% for females. The biggest increase came in the years 1969-1972, when the percentage of provincial inmates who were Aboriginal went from 49 to 58 percent.[1]

This was a period of massive urbanization, cultural conflict and serious complaints about racism and police brutality. It was before Canada even had a ***Charter of Rights and Freedoms***, at a time when the federal government still supported the abolition of reserves and the forced assimilation of Aboriginal people, as shown by the Trudeau government's white paper in 1969. Some of these conflicts came to a head in the early 1980s when there was the public inquiry in Regina into the apparently indiscriminant use of police dogs.[2]

In retrospect it could be argued that the jails replaced the residential schools as one means of trying to accomplish this unjust goal of forced assimilation. This use of the criminal justice system has had disastrous consequences; damaging the continuity of the Aboriginal family and their community and culture. The effect of this is to everyone's detriment.

Over the years the official explanations for this over-incarceration have gone through many versions. Poverty, "native criminality," lack of education, and alcohol abuse have all been claimed to be the main cause. Now we are even told it is demographics - the growing percentage of Aboriginal people in Saskatchewan.

All these "explanations" (except "native criminality") have an element of the truth, but they all ultimately fail. While these changes in official explanations have been occurring, the disparity in the percentage of Aboriginal people incarcerated in Saskatchewan has continued to grow.

2.1 Federal Corrections

A February 13-15, 1991 conference in Prince Albert, sponsored by Correction Services of Canada, provided the first public forum in some time to address the issues involving the disparity in the percentages of Aboriginal people incarcerated (see Appendix 1). A focus exclusively on reforming federal corrections is, however, structurally limited in its ability to tackle over-incarceration because it is the back-end of the system. Changes in social and economic conditions, policing and sentencing will all be required. Furthermore, the federal system accounts for a relatively small percentage of Aboriginal people incarcerated

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[1] Driedger, Otto; Skinner, Shirley and Grainger, Brian. ***Corrections: An Historical Perspective of the Saskatchewan Experience.*** Canadian Plains Research Center, University of Regina, Regina, SK, 1981.

[2] Faris, Don and Currie, Walter. ***Review of the Regina Police Service Canine Unit.*** Regina, SK: Regina Board of Police Commissioners, 1983.

in this province. More attention should be given to Aboriginal people incarcerated in the provincial correctional system.

According to the latest information available from the Canadian Centre for Justice Statistics (CCJS),[3] 54 percent of admissions to federal custody in Saskatchewan in 1989-90 were Aboriginal people. This compares to a Canadian average of 11 percent in the population and was the second highest percentage in the country, next to the Northwest Territories - N.W.T. (75%). On a per capita basis it is much higher than the N.W.T. Comparable figures for other provinces with a relatively high percentage of Aboriginal citizens were: Yukon (44%), Manitoba (40%), Alberta (23%) and British Columbia (14%). Clearly when it comes to federal prisons and prisoners, the conclusion holds that Saskatchewan has the highest level of incarceration of Aboriginal people.

But, as we shall see the total number of people involved is relatively small. In 1989-90, again according to the CCJS, there were 179 new people incarcerated in federal prisons in Saskatchewan, and 54% of these were Aboriginal. Many more than these are imprisoned due to federal inmates being sentenced for longer than 2 years (e.g., 179 were incarcerated in 1988-89, 209 in 1987-88, etc.), and most of these were also Aboriginal (e.g., 52% in 1988-89, 51% in 1987-88, etc.). The total number of people involved, however, remained in the hundreds.

2.2 Provincial Corrections

In contrast, the number of Aboriginal people involved in provincial corrections is in the thousands. If anything significant is to be done to alter the fact that Saskatchewan has the highest per capita incarceration of Aboriginal people, then it will have to involve changing the provincial legal practices and correctional trends.

The figures and trends are not encouraging. In 1989-90 7,551 people were incarcerated in Saskatchewan's correctional system.[4] Sixty-six (66) percent of these people were Aboriginal. Other than the N.W.T., where 88% of those incarcerated were Aboriginal, Saskatchewan's percentage was the highest. Considering the much smaller percentage of the population which is Aboriginal here than in the N.W.T., Saskatchewan corrections - as with federal corrections in Saskatchewan - had the highest per capita incarceration of Aboriginal people for all of Canada. The percentages of Aboriginal people in provincial corrections for other territories and provinces in 1989-90 was: Yukon (65%), Manitoba (47%), Alberta (31%) and British Columbia (19%).

The percentage of Aboriginal people incarcerated in Saskatchewan's provincial corrections was 56 percent in 1987-88. The percentage rose gradually from 1985-87 (64%) to 1988-89 (65%) to 1989-90 (66%).

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[3] Candian Centre forCriminal Justice Statistics. ***Adult Correctional Services in Canada,*** Table 30, 1989-90 (see Appendix 3).

[4] Ibid, Table 11 (see Appendix 3).

The actual numbers of people incarcerated in the province also increased from 6,791 in 1985-86 to 7,870 in 1987-88, and then declined slightly to 7,551 in 1989-90.

We are presently studying comparative research from Australia which suggests our rates of incarceration of Aboriginal people here may be among the highest anywhere in the world.

2.3 Aboriginal People on Probation

There are other indications that Saskatchewan has the highest involvement of Aboriginal people in corrections. Statistics released on probation by CCJS is one example.[5] Consistently, with the highest percentage of per capita incarceration of Aboriginal people in Canada, this province also has one of the highest percentages of Aboriginal people on probation. Of the 2,785 people in Saskatchewan on probation in 1989-90, 56 percent were Aboriginal people. Though this is a lower percentage than the N.W.T. (91%) or the Yukon (60%), it was the highest of the western provinces. Manitoba has 38 percent, Alberta was 21 percent and British Columbia was 15 percent. It is probably the highest per capita rate across Canada.

The high use of probation for Aboriginal people in Saskatchewan may have lowered the percentage and number of Aboriginal people in jail. Or it may have increased the number of Aboriginal people, overall, under the control of the criminal justice system. While the percentage of Aboroginals on probation has steadily increased; from 50% (1985-86) to 56% (1989-90). The percentage and number of Aboriginal people who were incarcerated provincially also increased during this same period.

2.4 Aboriginal People on Remand

Aboriginal people have typically constituted a higher percentage of people incarcerated on remand, awaiting trial and sentencing. Unfortunately the CCJS standardized reports do not separate Aboriginal people from the rest. However, it reported that in 1984-85 Saskatchewan had the second highest percentage of Aboriginal people in custody on remand (61%), higher than the Yukon (46%).[6] Overall, across Canada, the percentage of Aboriginal people on remand was 12% in 1984-1985. Only the N.W.T. - with a much larger overall percentage of Aboriginal people in the population - had a higher percentage (83%). The percentages of Aboriginal people held on remand in Manitoba, second highest after Saskatchewan, was 49%.

2.5 Aboriginal Women

The Task Force on federally sentenced women, the Carol Daniels' case and the tragic suicides of Saskatchewan Aboriginal women in PW4 (Kingston Penitentiary), have deepened our understanding of

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[5] Ibid, Table 17 (see Appendix 2).
[6] *Juristat*, Vol. 7, No. 1, February 1987.

Aboriginal women in conflict with the law. In Western Canada, Aboriginal women comprise anywhere from 13 to 80 percent of the inmate population.[7] In Saskatchewan the rates are from 80-90 percent.

2.6 Aboriginal Youth

Young Aboriginal people are at the greatest risk of incarceration. As much as 80 percent of legal aid work with youth in Saskatchewan involves Aboriginal youth. Due to the greater over-representation of Aboriginal youth, the age of people incarcerated in provincial corrections tends to be lower than the Canadian average.

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[7] C. LaPrairie. "Native Women and Crime in Canada: A Theoretical Model " in *Too Few to Count.* Adelberg E. Currie C. Press Gang, Vancouver, 1987.

3. INDICATORS OF COLONIAL OPPRESSION

Colonization and the reservation system resulted in extensive victimization of Indian women and men. Many Aboriginal women lost their "Indian" status due to marrying a non-Indian, and this meant the loss of housing. The European legal and patriarchal system imposed a dependent non-participating status on Indian women. With the encouragement and coercion to oblige Aboriginal people to abandon their traditional economic activities for a market economy, the traditional roles of Aboriginal people was radically changed. Residential schools eroded and denigrated parental roles and values.

Unemployment rates remain extremely high in Aboriginal communities in Saskatchewan, getting as high as 80-90 percent in some northern areas. The impact of economic dependency, social disorder and family breakdown on the mental health of people in Aboriginal communities is devastating.[8] In consultations on women and substance use in October1991, Aboriginal women suggested that sexual abuse was the foundation of substance abuse in 90 percent of the case loads in Northern communities.

Death rates from accidents and violence is considerably higher for Aboriginal men and women than for Canadians overall. The highest death rate occurs between the ages of 20-29 and 60-69. The Aboriginal rate remains consistently four to five times higher than the Canadian rate between the ages of 20-69 years. Seventeen point six percent (17.6%) of homicide victims were Aboriginal in 1988. Aboriginal people in Canada are eight times more likely than other Canadians to die as homicide victims. In Saskatchewan, reserves have an over-representation of violent crimes compared to other rural and urban areas.[9]

A registered Aboriginal person is approximately three times more at risk of death by suicide than is a non-Aboriginal Canadian. Females consistently have an even higher rate. A female Indian between 10-19 years is 7.5 times more likely to commit suicide than a non-Aboriginal Canadian female. The highest suicide rate for Aboriginal females is for those between 20-29 years, during which the suicide rate is 3.7 times the non-Aboriginal female rate.

In Saskatchewan the Aboriginal suicide rate has declined somewhat of late. Saskatchewan, however, had the second highest rate next to the Yukon for the period of 1979-83. Aboriginal youth, in particular, are at high risk for suicide, violent death and depression.

These are indicators of social, economic and political victimization. They provide a sense of urgency and responsibility to change structural relations.

There is the need to explore approaches that stress self-determination which take into consideration the inter-relationships of justice issues to living conditions and work opportunities, and which decrease the burden of pain and suffering that has been imposed on Aboriginal individuals and communities.

Incarceration is clearly not the answer. According to the testimony of Aboriginal women to the federal Task Force on federally sentenced female offenders, incarceration furthers the oppression of

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[8] See "Executive Summary" in ***Statistical Profile of Native Mental Health***. Health and Welfare Canada, 1990, p.i-ii.

[9] Canadian Centre for Justice Statistics. ***Crime in Aboriginal Communities,*** Saskatchewan 1989, April 1991.

Aboriginal women. Prisons can be tinkered with, but they cannot heal violence, assault, abuse or racism. Healing must be based in communities.

Because of these vital interconnections, we agree with the call by the Saskatchewan Coalition Against Racism (SCAR) for a full broad-based inquiry to include the investigation of family, social, health and educational services to Aboriginal youth. The death of Marlon Pippin in Regina in 1989 showed vividly and tragically how the lack of these services and the overdependence on the police are interrelated.

4. RETHINKING OUR EXPLANATIONS AND RECOMMENDATIONS

Various socio-economic and socio-legal explanations for this over-incarceration, and interrelated colonial oppression, have been posed over the years.[10] There is clearly the need to acknowledge the combined effects of colonization, forced underdevelopment and assimilation in creating the conditions that have led to systemic discrimination (see Appendix 3). This is the gist of the conclusions that underlie the recommendations provided by the Aboriginal Justice Inquiry in Manitoba.

4.1 Adressing Systemic Discrimination

The Manitoba Commissioners concluded, "There exist numerous laws and practices that discriminate in a systemic manner against Aboriginal people."[11] They quote a Winnipeg lawyer's brief that: "The real source of this discrimination is the well-meaning individual who does not consider himself a bigot but who, without realizing it, adheres to stereotypical views concerning natives." [12] They recognized the need for some fundamental historical perspective:

> **Historically, the justice system has discriminated against Aboriginal people by providing legal sanction for their oppression. This oppression of previous generations forced Aboriginal people into their current state of social and economic distress. Now, a seemingly neutral justice system discriminates against current generations of Aboriginal people by applying laws which have an adverse impact on people of lower socio-economic status. This is no less racial discrimination; it is merely 'laundered' racial discrimination.[13]**

And they emphasized: "Ignoring differences and refusing to accommodate them is a denial of equal access and opportunity. It is discrimination."[14]

From their findings and perspective they bring into focus many of the issues at the front-end of the criminal justice system that will also have to be tackled in Saskatchewan: over-policing, under-protection, urban policing and public complaints. And we generally support the orientation taken. But we are not naive about the kind of resistence that exists within the criminal justice system to special programs (affirmative action) and to a separate Aboriginal justice system.

It is our view, based in large part on our research unit's history of direct research[15] that many of the conclusions about Manitoba apply within our province. For instance the Commissioners wrote:

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[10] J. Harding. "The Evolution of Research Within the Dominant Society About the Oppression of Aboriginal People." Presentation given at Strategies to Reduce the Over-Incarceration of Canada's Aboriginal Peoples: A Research Consultation at Prince Albert, Saskatchewan, 29-31 March 1990.

[11] ***Report of the Aboriginal Justice Inquiry of Manitoba,*** A.C. Hamilton and C.M. Sinclair, Province of Manitoba, 1991, p.101.

[12] Ibid.

[13] Ibid., p.109

[14] Ibid., p.12.

[15] See also John Hylton et al. ***Public Attitudes About Crime and the Police in Regina,*** Prairie Justice Research, November 1979; John Hylton, ***Admissions to Saskatchewan Provincial Correctional Centres: Projections to 1993,*** Prairie Justice Research, February 1980; John Hylton and Rae Matonovich, ***Public***

> **We believe that many Aboriginal people are arrested and held in custody when a white person in the same circumstances either might not be arrested at all, or might not be held[16]....While today's police cannot be blamed for the historical circumstances of Aboriginal people, they need to better understand the context which affects every encounter with them[17]....Encounters between Aboriginal peoples and police forces are not only cross-cultural in nature, but are made even more problematic by the economic underdevelopment and oppression of Aboriginal peoples....[18]**

All these statements apply equally well to Saskatchewan as to Manitoba conditions. As one example of the fact that the criminal justice system works to systematically discriminate against Aboriginal people, we note the finding by a SADAC study in 1979 that once arrested in Regina, Indian people had three times and Metis had two times the chance as non-Aboriginal people of being charged for public drunkenness (see Apprendix 4).

It is also our view that there is a need for a major overhaul of the recruiting, training and the public complaints system in this province, as elsewhere. As the Manitoba Commissioners stated:

> **Throughout our hearings, we heard many complaints about racist comments made by the police to members of the public and to Aboriginal police officers....Such negative and racist attitudes cannot help but affect the quality of police service....**

They also concluded:

> **The problems of actual and perceived conflict of interest are just too great to expect a police force to be seen as effectively and objectively investigating its own members.[19]**

The same range of complaints should be investigated in this province, complaints such as "...discrimination on the basis of race, failure to exercise restraint with a firearm, altering an official document, use of excessive force, use of abusive language, being discourteous or uncivil...."[20]

We recognize the complexity and difficulty in effectively altering recruiting and training policies and practices, but this must be tackled. The Manitoba Inquiry was quite forthright in calling for 12 percent of the Winnipeg police force being Aboriginal, to complement the percentage in the overall population. The recommendation that the next recruiting class be entirely Aboriginal, and thereafter there be 50 percent

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Attitudes About Crime and the Police in Moose Jaw, Prairie Justice Research, December 1980; Paul Havemann et al, ***Law and Order for Canada's Indigenous People,*** March 1985; Prairie Justice Research, ***Strategies to Reduce the Over-Incarceration of Aboriginal People in Canada: A Research Consultation,*** Prairie Justice Research, 1990; Jim Harding and Bruce Spence, ***An Annotated Bibliography of Aboriginal-Controlled Justice Programs in Canada,*** Prairie Justice Research, June 1991; and Jim Harding and Beryl Forgay, ***Breaking Down the Walls: A Bibliography on the Pursuit of Aboriginal Justice,*** Prairie Justice Research, June 1991; Jim Harding, "Policing and Aboriginal Justice," in ***Canadian Journal of Criminology,*** July/October, 1991, p.363-383.

16 Ibid., p.595.
17 Ibid., p.596.
18 Ibid., p.597.
19 Ibid., p.603.
20 Ibid., p.628.

Aboriginal recruits in training until this target is met, will likely be erroneously met with charges of "reverse racism." Yet, without special programs it is unlikely the composition of police will alter there, or here.

4.2 Inter-Professional Education

The potential role of broad inter-professional education, such as that provided by our School for 15 years needs to be better explored. For a decade we have been involved with Saskatchewan Justice in their training program for Corrections Workers. We believe the Native Human Justice Program operated by Gabriel Dumon Institute out of Prince Albert holds the promise of providing relevant post-secondary education for potential human service and justice workers in the dominant or a separate Aboriginal justice system. We believe our program - operating out of Regina, Saskatoon and Prince Albert - remains seriously underutilized by Saskatchewan policing agencies and individual police. We have, however, seen some promising consultation about such issues as community-based policing through such things as the Symposium we sponsored in December 1990.[21] Two Associates of the School have recently been involved in the cross-cultural program delivered by the Regina City Police Services.

If programs such as the 2-year Certificate in Native Human Justice are expanded then there will be more university graduates interested in police work who will not be open to the charge, from existing bodies, that affirmative action means reduced standards. We do not agree that special measures mean reduced standards - in fact, hiring police with cross-cultural backgrounds would enhance policing standards. Nevertheless, the expansion of post-secondary inter-professional education to help achieve affirmative action objectives should be looked at closely.

We believe that historical understanding and acknowledgement of the workings of colonization, under-development and overt and covert racism is essential to be able to move in a new direction which affirms Aboriginal self-determination and self-government, and which creates community-based programs to this end. There are specific events which have occurred in Saskatchewan, probably most noteably around the Duck Lake Rebellion, which have shaped the institutional and ideological makeup peculiar to this province. It may even be that the military repression and punitive actions taken against Aboriginal people at the time continue to leave their mark on the relations and institutions that cross the cultures.

The Manitoba Inquiry is quite vivid in its discussion of this heritage:

> **Eighteen Metis and 30 Indians were apprehended and convicted. Louis Riel and 8 Indians were executed. Riel was hanged in Regina following his trial, but the Indians were executed publicly in the Mounted Police stockade at Battleford, Saskatchewan. The government 'encouraged' Indians from nearby reserves to witness the execution,**

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21 ***Report of Symposium on Community Policing*** , Prairie Justice Research, School of Human Justice, November 1991.

'as it was held that such a tragic spectacle would be an emphatic deterrent against a repetition of such offences.'[22]

This living history may be part of the explanation for the higher rates of over-incarceration and the apparent political resistance to a full inquiry into the underlying reasons for this.

We believe the direction to go is towards community-based programs, not undertaken as a means to justify cuts, but with the funding required to accomplish their goals. Examples of some such programs are listed in our recent report.[23] To accomplish this, there must be a reexamination of government funding formulas and the transfer of fiscal and social resources to Indian and Metis communities.

Current funding policies serve to separate community justice agencies and Aboriginal groups. Emphasis on community sanctions, community involvement and social control functions has been mostly expropriated from Aboriginal communities. In the north, circuit courts do not function to meet community needs. Police must be willing to work with the community and allow communities to resolve most of their own crises. Saskatchewan Justice and Justice Canada need to recognize this. To move positively in this direction. We need to rethink our understanding of ethnic relations in this province and country.

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[22] ***Report of the Aboriginal Justice Inquiry of Manitoba,*** op. cit., p.593.

[23] Jim Harding and Bruce Spence. ***An Annotated Bibliography of Aboriginal-Controlled Justice Programs in Canada,*** Prairie Justice Research, School of Human Justice, University of Regina, June 1991.

5. RESTRUCTURING ETHNIC RELATIONS: AN OVERVIEW

There are 6,276 significant ethnic groups in 159 countries. If we subtract 159 groups, i.e., the mainstream ethnic group in each country which presumably has the central government available as its advocate, that leaves 6,117 ethnic groups spread out over the 159 states of the world.

According to the 1986 census, more than 60 ethnic groups live in Saskatchewan. The most salient are the Anglo-Canadians (379,199), German Canadians (264,000), Scottish Canadians (188,360), Irish Canadians (160,000), Ukrainian Canadians (125,775), French Canadians (117,875), Canadian Indians (55,215), Metis (12,000) (this is likely a serious under-estimation of the Metis population), 8,795 Chinese, 900 people of African descent, and 240 Arabs.[24] The Aboriginal Canadians are the largest ethnic group of non-European descent in Saskatchewan.

Although the Aboriginal population holds seventh place in relation to population, we must be careful to distinguish ethnic rights and claims from those of national minorities, such as the Indians and Metis[25] in Saskatchewan. National minority is often used as a synonym for ethnic groups. However, an ethnic group is often meaningfully distinguished from a national minority. Ethnic groups can be said to process the following:

> **The sense of unique group origins. The knowledge of a unique group history....One or more dimensions of collective solidarity.[26]**

On the other hand, national minorities can be defined as follows:

> **[National minorities] are distinguished by the existence of a powerful myth of ethnic nationalism which, despite its ambiguity, has the capacity for mobilization. It sees its nation as an imagined political community - and imagined as both inherently limited and sovereign.[27]**

Traditionally, states have always viewed the rights and claims of national minorities differently than those of ethnic groups or non-national minorities. Gudmundar Alfredsson writes:

> **It has now been laid down in ILO Convention No. 169 and proposed at the United Nations that indigenous (and tribal) peoples, as legal categories of beneficiaries different from minorities, should benefit from special rights so far not embodied or foreseen in official ethnic group rights proposals. These indigenous rights comprise economic rights, such as the possession of and control over land and natural resources, and political rights, in particular self-government or autonomy and the recognition of existing treaties between indigenous peoples and states.[28]**

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[24] Multicultural Council of Saskatchewan, 1986.

[25] What is being said in relation to minority rights about the Aboriginal nations of Saskatchewan may equally be said of the Metis people or nation.

[26] Anthony D. Smith. "The Ethnic Revival" in ***The Modern World.*** Cambridge University Press, 1981, p.66.

[27] Benedict Anderson. ***Imagined Communities: Reflections on the Origins and Spread of Nationalism.*** London: Verso, 1983, p.15.

[28] Gudmundar Alfredsson. "Equality and non-discrimination: Minority Rights." Presented to the 7th International Colloquy on the European Convention on Human Rights, May 30-June 2, 1990, Doc. H/Coll (90) 6. See also the latest report of the Working Group on Indigenous Populations as contained in document E/CN.4/Sub.2/1989/36. annex II of this document reproduces the "Draft Universal Declaration on the Rights

In this Brief we have suggested a historical and structural basis for the problem of over-incarceration of Aboriginal Canadians. This results from policies hinged on an unworkable conception of Aboriginal rights and needs as a national minority. For Saskatchewan, the multicultural structure alone will not be sufficient to provide the framework through which the problem of the disproportionality in Aboriginal involvement with the criminal justice system can be fruitfully approached. Instead we suggest the need in Saskatchewan for provincial forms of multiculturalism, multinationalism and affirmative action (special measures).

5.1 The Failure of Past Models in Saskatchewan

The history of Saskatchewan indicates that it has passed through four stages or models in relation to attempting to find an appropriate approach to relating with Aboriginal people: mutual acceptance, colonialism, domestic colonialism, forced assimilation (ethnocide) and multiculturalism. The earliest settlers seem to have been content to share the land with its Aboriginal inhabitants in a form of classical colonialism, as indicated in the treaties they signed; later these treaties were put aside, and through actions like the execution of Louis Riel and his Indian allies, the destruction of the buffalo, etc., they seemed to have decided that domestic colonialism was a possible solution. Much later, as witnessed by the Trudeau government White Paper of 1969, succeeding generations of European settlers concluded that forced assimilation (ethnocide) would be preferable to domestic colonialism or mutual acceptance.

This model, similar to the preceding ones, spun policies which brought social, economic and cultural confusion and deterioration to the Aboriginal communities of Saskatchewan. Ten years ago, Aboriginal people in Saskatchewan accounted for 54 percent of all male admissions to federal correctional facilities, as highlighted in the preceding section on "Over-Incarceration." This gradually increased to 65 percent by 1988/89, while the rate of female Aboriginal admissions has risen approximately 90 percent. One in ten status and one in 25 non-status Indians over the age of 17 is likely to go to jail, while the chances of a non-Aboriginal person going to jail is one in 250. The profile of the Aboriginal offender is one of low education, high levels of unemployment upon admission, high incidence of alcohol abuse and more likely to be resident of an urban community than a reserve. In ten years, the education level of Aboriginal inmates has improved only marginally and the level of unemployed among those admissions has increased. There has been an increase in against-person offences, offences against the justice system and an increase in length of sentence.

In education, one half of reserve residents aged 15 and over have never been to high school, and 14 percent have less than a grade five education. In employment, approximately 30 percent of the reserve population aged 15 and over is in the labour force, compared to 68 percent of the off-reserve population in Saskatchewan. Unemployment rates in reserve communities are highest in northern Saskatchewan, where social and economic development and population is sparce. As far as violent crime is concerned, a

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of Indigenous Peoples," which was tabled in 1988 and revised in 1989 by Erica-Irene Daes, the Chairman/Rapporteur of the Working Group.

disproportionately high percentage of violent offences is reported on reserves where the average income of people aged 15 and over is much lower than that of the majority Canadian population.[29]

Other statistics demonstrating the failures of the structural model engendered by policies of forced assimilation are plentiful. Because of these failures and the resulting disproportionate involvement of Aboriginal peoples with the criminal justice system, today the situation seems to have turned full circle. We are now reconsidering the possibility of mutual acceptance, as witnessed by consideration of recognizing the Aboriginal peoples' right to self-determination. Furthermore, to make up for past wrongs from attempted ethnocide, there is the need to recognize Aboriginal rights to affirmative action. However, we still fail to view affirmative action within the larger context of special measures as conceived though the practices of most states over fines. To do this, we would have to examine the socio-political and economic structures of the province so as to apply affirmative action in a manner as to not infringe upon the rights of other individuals or ethnic groups, and to create socio-political restructuring which encourages greater economic development within the context of a multicultural and multinational framework.

Can the acceptance of the right of Aboriginal people to self-determination and special measures for past wrongs, as suggested throughout this Brief, serve as the foundation for an ethnic relations model that will permit the formulation and implementation of policies that can succeed in solving the problem of over-involvement of Saskatchewan's Aboriginal peoples in the criminal justice system? If so, what is the ethnic relations model engendered by respecting the rights to self-determination and special measures?

5.2 Towards Consociated Democracy in Saskatchewan

Acceptance by the dominant ethnies that national minorities and various other ethnies are here to stay and not something to be wished away, and the consequential realization by the provincial government that national minorities necessitate the accordance of special rights, is the first requirement for the consociational model. The second is the willingness of the provincial government to provide the Aboriginal nations with political power sufficient to assure their developmental needs, and to provide the government with the credibility of not being the instrument of the dominant ethny or ethnies, but rather an honest broker, whose task is not to end the problems of ethnic relations, but rather to manage these problems.

This model suggests that the avoidance of unmanageable ethnic conflict like that which causes a negative response to law and over-incarceration, results from the distribution and forms of power in a multicultural and multinational society. Does the system encourage direct confrontation with the centralized government or does it encourage ethnic cooperation? What is suggested is that unmanageable problems occur between a strong centre and the periphery, and most often between a hegemonic central power and a fairly determined national minority in the periphery. It further suggests that community-based justice among

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[29] "A Statistical Study of Crime in Aboriginal Communities: A Prototype," prepared by the Integration and Analysis Program, the Canadian Centre for Justice Statistics, December 1990.

dispersed ethnic groups encourages inter-ethnic cooperation and inter-ethnic socio-economic development. Unlike centralized ethnic systems, where all political power is centered in the hands of the dominant ethny or ethnies, which impede it. Centralized ethnic systems involve the whole state. The state can not be arbitrator; its police, courts, and overall justice system are not neutral; it is itself a focal point of conflict, an actor in the historical conflict.

The idea behind "consociated" democracy is that all national minorities within the state should be guaranteed a reasonable degree of influence in the political system, which should thereby ensure the fairest possible distribution of resources between the ethnic groups within the state. Consociated democracy represents an alternative to what may be called "majority" democracy - where the individual citizen is the most important political unit, and political legitimacy is won on the basis of support from the majority of individual citizens.

A consociated system of government means that political decisions are based on collaboration between representatives from the different groups. This requires that the leaders collaborate and recognize the rights of the various groups to work for their own interests and values, and that a community-based political structure is in place that does not permit majority decision to overshadow the need of national minorities.

The consociational theory underlines that successful problem management in such situations is dependent on a mutual respect for the autonomy and integrity of each actor, and on deviation from the majority principle in the decision-making procedures. Consociational theory applies in a situation where two or more collective actors that cannot be integrated to form one unified actor, realize that they have to co-exist within and delegate some sovereignty to a common institutional framework: the state or the province.

> **This approach falls squarely within what may be described as a conflict approach to the study of politics. The crucial problem of politics is the management of conflict. No regime could endure which did not cope with this problem. All politics, all leadership and all organization involve the management of conflict.**[30]

Certainly an ideal situation which has been proposed by consociation is that the management of ethnic conflicts be diffused, or localized, or taken off the central stage of politics, where institutional mechanisms are found for intra-ethnic competition rather than inter-ethnic confrontation. The optimal solution in all cases is the devolution of power and the provision for local autonomy. If the consociational model is used, then finding solutions to the problem of the disproportionate involvement of Aboriginal Canadians in Saskatchewan's criminal justice system (likely caused by historical and present systemic discrimination, highlighted in other parts of this paper) seems dependent on the willingness and ability of the provincial government to accept the demand of the Aboriginal people in Saskatchewan for their fundamental human right to self-determination. This will involve providing for programs of affirmative action or special

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[30] Eric A. Nordlinger. ***Conflict Regulation in Divided Societies,*** Centre for International Affairs, Harvard University, 1977, p.1.

measures so as to produce equal-status relationships between Aboriginal Canadians, both Indian and Metis, and other ethnic groups in the province.

It is evident the models engendered by the philosophy of forced assimilation do not work in relation to national minorities. Insistence on the enforcement of such models not only leads to disrespect for the laws of the province, to poverty, lack of education and over-incarceration, but may well threaten the continuity of the unitary nature of the province (as witnessed by the crisis over special status for Quebec).

In Saskatchewan, Aboriginal Canadians await their turn to become an equal-status part of the province. A model of society that can accept them and permit them to develop, in equal status, as they are, is the challenge. To fail to meet this challenge will only re-enforce or encourage continued psychological, sociological, economic and political dissociation of the Aboriginal people from the laws and government of Saskatchewan. Dissociation as used here refers to the feeling of not belonging to the political unit that governs, the feeling that the political unit represents a hostile entity or nation, a nation whose purpose is to control regardless of the cost to the minority being governed. Of course, using the power of the criminal justice system as a means of social and political control in order to maintain peace, law and order in the majority society will meet with relative success as long as there is sufficient cooperation even in mutual psychological and sociological dissociation. However, no just peace can result from socio-psychological dissociation. The whole idea of conceiving of peace positively amounts to rejecting the dissociative approach as a goal. It is too negative, too uncooperative, too non-integrative. Even if there may be some peace based on law and order in dissociation, for the majority society it would still mean the continued disproportionate involvement of Aboriginal people in Saskatchewan with the criminal justice system. It would also mean the hopeless inability of that system to ever create policies that stand a chance of being successful, and eventually the possiblity of division into separate political entities.[31]

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[31] Johan Galtun. "Twenty-Five Years of Peace Research: Ten Challenges and Responses" in ***Journal of Peace Research***, Vol. 22, No. 2, 1985.

6. THE NEED FOR A FULL INQUIRY

Observers of the situation in this province may have wondered whether there is any relationship between the fact that Saskatchewan has the highest per capita incarceration of Aboriginal people in all of Canada, including the far North, and the fact that there has been so much political resistance to calling a full public inquiry on Aboriginal justice. It remains problematic, at least to us, that even though Saskatchewan faces such grave conditions regarding Aboriginal people and the justice system that, so far, there has been no agreement to proceed with a full in-depth inquiry.

The extensive investigation of the justice system in Nova Scotia started with an inquiry into the wrongful conviction of Donald Marshall, Jr. Donald was a Micmac Indian in a province with a much smaller percentage of Aboriginal people overall, or within the jails and prisons than Saskatchewan. The extensive investigation in Manitoba was catalyzed by the killing of John Joseph Harper and the reopening of the investigation of the murder of Helen Betty Osborne. Both ended up as full-scale investigations into the systemic discrimination and over-incarceration experienced by Aboriginal people in the overall criminal justice system.

6.1 The Nova Scotia Findings

The Nova Scotia Royal Commission issued 82 recommendations. These spanned ways of preventing and treating wrongful conviction; the relation of visible minorities, Micmac Indians and Nova Scotia Blacks to the criminal justice system and the overall administration of justice and policing.

The scope of these recommendations indicates that after digesting over 16,000 pages of evidence the commissioners did not see this as an isolated case, or an error in the administration of justice. As the report said, Donald Marshall, Jr. was failed "at virtually every turn from his arrest and wrongful conviction for murder in 1977, up to and even beyond, his acquittal by the Court of Appeal in 1983."[32]

Of most significance was the finding that what was repeatedly called "systemic discrimination" underlay the wrongly conviction. Over and over the recommendations make the point: "that the fact that Marshall was a Native was a factor in his wrongful conviction and imprisonment," "that the fact that Marshall was a Native was one of the reasons [he was] identified as the prime suspect," etc. Furthermore, once wrongly charged - in part due to being Native - the trial, review and appeal processes all failed Donald Marshall.

Of major significance to the ensuing debate over Aboriginal justice was recommendation #20 which suggests "that a community-controlled Native Criminal Court be established in Nova Scotia." In this court a Native Justice of the Peace would "hear cases involving summary conviction offences committed on a reserve." Diversion and mediation would both be used "to encourage resolution of disputes without resort to

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[32] Summary, Commissioner's Report. ***Royal Commission on the Donald Marshall Prosecution***, 1989.

the criminal courts." Alternatives to both fines and imprisonment would be encouraged, there would be community input in sentencing and the establishment of aftercare services.

6.2 The Manitoba Findings

The most extensive public inquiry to date has been the Aboriginal Justice Inquiry in Manitoba. The Aboriginal groups that presented to this inquiry presented far-reaching recommendations.[33] Several groups called for a response to justice issues from the federal government which acknowledged The First Nations as self-governing people. This included a call for a tripartite approach which involved The First Nations, federal and provincial governments and for compensation for past destruction of Aboriginal lands. Such directions were seen to be essential to overcome the kinds of systemic discrimination that led to the inquiry, in part by establishing legal pluralism which respected the right to self-determination of Aboriginal people in Canada.

The Manitoba Inquiry expressed deep shock at the great overproportion of Aboriginal people incarcerated in jails and prisons in that province. They found that with about 12 percent of the total provincial population, Aboriginal inmates made up 40% of those incarcerated. If anything, as we have seen, Saskatchewan has an even more shocking overproportion of Aboriginal people in jail or prison.

Estimating the percentage of the population which is of Aboriginal origin is not that easy. Unfortunately we don't yet have the statistics Canada 1991 Census estimates. In the 1986 Census the estimate for the percentage of people in Saskatchewan who were Aboriginal was 7.8% (77,640 people out of 996,715). The comparable figure for Manitoba in 1986 was 8.1% (85,250 of 1,049,310 people).

These percentages are clearly low for the present. The Manitoba Inquiry decided on a figure of 12% for that province. It is likely even higher for Saskatchewan. Just the Registered Indians in Saskatchewan as of December 1990 totaled 75,441. The increase is in part due to the effects of Bill C31 (which returned status to Indian women and their offspring who married non-Natives) and due to the birth rate. This total alone almost comes to 7% of the total population. While it is harder to get an estimate for Metis and for non-status Indians, it is not unlikely that the percentage of Saskatchewan people who are of Aboriginal origin is at least as high as Manitoba (12%) and perhaps higher (15%). The estimate of from 8 - 10% given in the Interim reports of the Justice Review Committees is likely an under-estimation.[34]

Even with a similar or slightly higher percentage of Aboriginal people than Manitoba, Saskatchewan has a much higher percentage of Aboriginal people within the correctional system. The Alberta Task Force expressed deep concern that one-third of the inmates in the province's jails were of Aboriginal descent.[35] As we have seen this too is a much lower rate than in Saskatchewan.

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[33] ***A Summary of Recommendations from Aboriginal Representatives to the Manitoba Aboriginal Justice Inquiries,*** February 1, 1991.

[34] "The Interim Report of the Metis/Indian Justice Review Committee," ***Saskatchewan Justice,*** September 1991, p.5.

[35] M. Cernetig. "Task Force to Look at Why Natives Jailed," ***Globe and Mail,*** January 13, 1990.

6.3 Background to Saskatchewan Review

After months of rejecting the need for an Aboriginal Justice inquiry in Saskatchewan, past Minister of Justice Gary Lane was apparently successfully convinced and/or pressured to announce a provincial Review of the experience of Aboriginal people in the justice system.

One reason given for not having an inquiry here was that we should wait for other inquiries to report and see what we could learn from them. The justification given by Minister of Justice Gary Lane for finally deciding on a Review, rather than an Inquiry with power to investigate alleged wrongdoing, was that a Review would allow a broader evaluation. In actuality the scope of the Manitoba Aboriginal Justice Inquiry, which started as a specific investigation, quickly expanded concerns raised by Aboriginal groups and spanned

1. the constitution relationship of The First Nations to Canada,
2. systemic discrimination (covert racism) within the criminal justice system,
3. over-policing of Aboriginal people,
4. the problems created for Aboriginal people by ***The Indian Act*** and DIAND, and
5. the lack of concrete alternatives to incarceration for Aboriginal people.

In his public statements explaining why he would not support a full public Inquiry, past Justice Minister Gary Lane actually prejudged several issues which such an inquiry would have to explore. He is quoted in the ***Leader Post*** as saying, "An inquiry would probably be an opportunity to raise old wounds and rehash past matters....I don't need a process, and I don't think it serves the public or the Indian people...if it's just a process to get publicity."[36] It is a very narrow view, indeed, to see the kind of inquiries launched in Nova Scotia and Manitoba, or even the less comprehensive Task Force in Alberta, as publicity-seeking.

Furthermore, he justified ruling out a public inquiry as follows, "I'm trying not to nitpick on the word, but inquiries tend to be targeted to a single issue, and we have to have something broader than that, whatever format it takes."[37] In view of the breadth of the inquiry and recommendations of both the Nova Scotia and Manitoba inquiries - both mostly based on reopening particular cases - this reasoning does not seem justified.

It is our view that this Review, however helpful, constitutes only a beginning of the much overdue process of public inquiry into systemic discrimination of Aboriginal people in this province. The short time period (6 months) was inadequate to fundamentally explore the workings of the police, court and corrections systems as they bear upon Aboriginal people and communities. Any enforcement of the deadline for written briefs, for example, would have ruled out our participation in the Review. Our research in this and related areas has been undertaken - often under contract with the Solicitor General - for 15 years. We would hope it would be considered as one important source of socio-legal research in this area.

While recommendations on crime prevention and community-based justice services will be appreciated, these may have to be made without full disclosure of the problems they serve to address. The restrictive format, which apparently only belatedly included public meetings, will not be able to

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[36] "Native Justice Probe Considered," ***Regina Leader Post***, Saturday, January 13, 1990.
[37] Ibid.

systematically "tap" the concerns of Aboriginal or other people within the various diverse communities in the province. This is not the result in any way of the members of the Committees but, as we have said, of the limited process.

We are not surprised that Aboriginal leadership which has experienced the more systematic approach of the Manitoba inquiry is counselling Saskatchewan Aboriginal people to take a second look at what is realistically possible from the present Review process (see Appendix 5).

6.4 LaChance Case Needs Reopening

The circumstances surrounding the death of Leo LaChance in Prince Albert in April 1991 justify an intensive case-based public inquiry. Carney Nerland's involvement with the white supremacist "Aryan Nations" at Provost, Alberta, several months before the killing of LaChance; the charge of manslaughter, and the relatively short (4 years) sentence, have all left a deep skepticism among Aboriginal and other observers about the administration of justice in this province. There remain serious questions about the prosecution, including the fact that Nerland pleaded guilty to manslaughter and did not testify in court, and the added fact that the two men in Nerland's gun shop when the killing occurred were never called to testify. The premeditated firing of two shots into the floor by Nerland prior to firing into the door after LaChance left (fatally wounding LaChance), and testimony by the prosecutor that after being refused bail Nerland told a police officer "If I am convicted of shooting an Indian, they should give me a medal,"[38] all tend to taint the charge and trial process. The added fact that apparently the two acquaintances of Nerland in the store at the time of the shooting were both Saskatchewan Justice corrections' employees and did not report the killing directly to the police all tend to reinforce the view that "racism" may have been at play.

There is much, if not more, *prima facie* evidence that racism was involved in this killing than there was prior to the inquiry into the killing of J.J. Harper in Winnipeg. We would therefore encourage your Reviews to be treated as a preliminary process, to be followed by a full-fledged public process. It should be designed to enhance the understanding of the roots of over-incarceration and other oppression of Aboriginal people, and to increase support for finding fundamental community-based alternatives as part of moves toward self-determination.[39]

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[38] D. Jenish, "Give Me a Medal," ***Macleans***, July 29, 1991, p.42.

[39] In March 1992 Saskatchewan Justice announced there would be an Inquiry into the LaChance murder.

APPENDIX 1

Taken from: *Prince Albert Herald*, February 14, 1991

Natives want to become participants in the correctional system says Morin

By BARB GUSTAFSON
of the Herald

The correctional system is moving — slowly — in the right direction, says Gerry Morin.

"Corrections has a long history with native people. Perhaps it's not the history you want to refer back to," said Morin.

The Prince Albert lawyer, described as an "aboriginal role model" by Ernie Sauve, moderator, was speaking at the Sharing Ideas and Working Together federal corrections conference Thursday in Prince Albert. About 150 people were on hand at the Marlboro Inn.

During the past 20 years, said Morin, the purpose of prisons has gone from warehousing people to involving the community. That's a move in the right direction, he said.

"Perhaps now, the community is even further defined as involving the aboriginal community. In the past, how much involvement did natives have? They were the recipients of programs. Now, they say they need to be participants. How much we'll be able to participate will be interesting."

Morin was commenting on the report issued by the Task Force on Aboriginal Peoples in Federal Corrections. The task force was struck by the federal government in March of 1987.

Morin said the report looks good on paper, "but the judgment comes from what is done, not what is said."

He took some points from the report as examples. He said the inclusion of more native-based programming in the prisons is good, but may draw calls of reverse discrimination.

"People will say it is not the way to do things. But we have a relatively short history in our involvement in the majority of society. Only in the last 40 years were Indian people allowed to leave reserves. In the last 20 years, we have taken some foothold in society and asserted our place.

Morin also pointed out some of the wording in the report. While the clergy of predominantly white congregations are allowed certain privileges in the prisons, native elders are allowed free movement "under normal conditions," the report says.

"It gives tremendous discretionary power within that institution," said Morin.

Similarly, the description of the native community an parolee can be released to is said to be "with a regular, recognized structure" of a chief and council.

"It begs the question, whose recognition is needed?" said Morin. "Maybe I am being too picky, but terminology reflects attitudes."

The report does, however, give native people a starting place for change, he said.

Speaker says too many natives in our jails

Saskatchewan should quit watching other provinces and do something about its own problem of over-incarceration of natives, says Jim Harding.

Harding, director of the School of Human Justice at the University of Regina, spoke at the corrections conference held Thursday in Prince Albert. He said outside of the Northwest Territories, Saskatchewan has the highest percentage of natives in its jails and is doing little to change that statistic.

Harding said his involvement in native issues began in 1964. Sent to Ile-a-la-Crosse, 290 kilometres northwest of Prince Albert, to research the public school curriculum's relevance to the north, he had to return to Prince Albert, to the jail, to find enough northern residents who had been through the school system.

Since then, Harding has continued to research the interaction of the correctional system and native people.

In the '60s, he said, people believed poverty was the reason. The solution, therefore, was to assimilate native people. In the mid 1970s, the idea was "native criminality — a predisposition to crime," he said.

"There are a lot of people in my field who persist in doing research from that perspective," said Harding.

Today, events such as the standoff at Oka, Que., and questions about the constitution are putting the problem into its proper place, he said.

Harding presented statistics about native incarceration in Saskatchewan. In the 1920s, five per cent of men in jail and 20 per cent of women were native.

In the '70s, 65 per cent of male prisoners were native and 90 per cent of female prisoners.

From 1969 to 1972, the percentage went from 49 to 60 per cent due to "urbanization in a massive way," said Harding.

As native people moved to the city, city police forces reacted by arresting them, contends Harding.

"The goal was to get native people out of the city, to tell them they were not welcome. To assert a view of Canada that can only be described as white supremacist."

The three recommendations Harding would make to reduce the number of natives in jails would be to have an effective independent complaint system, a native-run alcohol detoxification system, and a system to treat family violence problems.

GUSTAFSON

APPENDIX 2

Table 30

Warrant of Committal Admissions to Federal Custody, by Selected Perspectives and Inmate Characteristics, by Province of Sentence, 1985-86 to 1989-90 – Concluded

Tableau 30

Nombre d'admissions dans les établissements fédéraux en vertu d'un mandat d'incarcération, selon certaines perspectives et caractéristiques du détenu et, selon la province où la peine a été infligée, 1985-86 à 1989-90 – fin

Province of sentence and year Province où la peine a été infligée et année		Number Nombre	Selected perspectives Certaines perspectives			Selected inmate characteristics Certaines caractéristiques du détenu		
			Rate/10,000 total population Taux pour 10 000 habitants de la population totale	Rate/10,000 adult population Taux pour 10 000 adultes	Rate/10,000 adults charged Taux pour 10 000 adultes inculpés	Per cent female Pourcentage de femmes	Per cent native Pourcentage d'autochtones	Average age[1] Âge moyen[1]
Alberta	1985-86	534	2.3	3.2	48	4	22	29
	1986-87	447	1.9	2.6	43	4	20	29
	1987-88	484	2.0	2.8	45	3	22	30
	1988-89	461	1.9	2.7	45	4	31	30
	1989-90	537	2.2	3.1	56	3	23	30
British Columbia - Colombie-Britannique	1985-86	512	1.8	2.4	75	6	13	33
	1986-87	483	1.7	2.2	72	2	14	32
	1987-88	471	1.6	2.1	62	2	12	33
	1988-89	497	1.7	2.2	68	1	17	33
	1989-90	509	1.7	2.2	62	2	14	32
Yukon	1985-86	3	1.3	1.9	12	-	33	33
	1986-87	6	2.7	3.9	29	-	33	36
	1987-88	11	4.5	6.4	45	-	54	34
	1988-89	6	2.4	3.4	18	-	50	32
	1989-90	9	3.5	5.1	26	11	44	34
Northwest Territories - Territoires du Nord-Ouest	1985-86	25	4.9	8.1	47	-	76	28
	1986-87	19	3.7	6.0	43	-	73	29
	1987-88	19	3.7	6.0	41	-	63	28
	1988-89	27	5.2	8.4	53	4	96	26
	1989-90	16	3.0	4.8	26	-	75	29
Outside Canada - Extérieur du Canada	1985-86	3	...	...	...	-	-	30
	1986-87	-	...	...	...	-	-	-
	1987-88	-	...	...	...	-	-	-
	1988-89	3	...	...	...	-	-	37
	1989-90	-	...	...	...	-	-	-
Not stated - Non déclaré	1985-86	6	...	...	...	-	-	30
	1986-87	8	...	...	...	-	-	31
	1987-88	9	...	...	...	-	22	28
	1988-89	13	...	...	...	-	-	38
	1989-90	59	...	...	...	5	10	33
TOTAL	1985-86	4,976	1.6	2.2	49	3	18	30
	1986-87	3,741	1.5	2.0	44	2	16	29
	1987-88	3,988	1.6	2.1	45	2	11	30
	1988-89	4,011	1.5	2.1	47	3	13	31
	1989-90	4,274	1.6	2.2	50	3	11	31

See footnote(s) at end of tables.
Voir note(s) à la fin des tableaux.

Table 30

Warrant of Committal Admissions to Federal Custody, by Selected Perspectives and Inmate Characteristics, by Province of Sentence, 1985-86 to 1989-90

Tableau 30

Nombre d'admissions dans les établissements fédéraux en vertu d'un mandat d'incarcération, selon certaines perspectives et caractéristiques du détenu et selon la province où la peine a été infligée, 1985-86 à 1989-90

Province of sentence and year / Province où la peine a été infligée et année		Number / Nombre	Selected perspectives / Certaines perspectives			Selected inmate characteristics / Certaines caractéristiques du détenu		
			Rate/10,000 total population / Taux pour 10 000 habitants de la population totale	Rate/10,000 adult population / Taux pour 10 000 adultes	Rate/10,000 adults charged / Taux pour 10 000 adultes inculpés	Per cent female / Pourcentage de femmes	Per cent native / Pourcentage d'autochtones	Average age[1] / Âge moyen[1]
Newfoundland and Labrador – Terre-Neuve et le Labrador	1985-86	97	1.7	2.5	52	4	1	29
	1986-87	105	1.8	2.7	59	1	1	30
	1987-88	70	1.2	1.8	35	1	4	31
	1988-89	79	1.4	2.0	40	1	6	34
	1989-90	89	1.6	2.2	47	2	2	33
Prince Edward Island – Île-du-Prince-Édouard	1985-86	9	0.7	1.0	14	-	-	28
	1986-87	14	1.1	1.5	24	-	7	26
	1987-88	11	0.9	1.2	20	-	-	32
	1988-89	16	1.2	1.7	30	-	6	27
	1989-90	14	1.1	1.5	27	-	-	27
Nova Scotia – Nouvelle-Écosse	1985-86	252	2.9	3.9	75	3	1	28
	1986-87	189	2.1	2.9	59	2	3	27
	1987-88	160	1.8	2.5	48	3	1	29
	1988-89	168	1.9	2.6	52	4	1	29
	1989-90	162	1.8	2.4	48	2	1	30
New Brunswick – Nouveau-Brunswick	1985-86	135	1.9	2.6	55	2	3	26
	1986-87	119	1.7	2.3	50	1	2	27
	1987-88	106	1.5	2.1	46	3	2	29
	1988-89	104	1.5	2.0	47	1	2	31
	1989-90	115	1.6	2.2	56	3	5	32
Québec	1985-86	1,208	1.8	2.4	93	2	-	30
	1986-87	1,109	1.7	2.2	79	1	1	29
	1987-88	1,258	1.9	2.5	84	2	-	30
	1988-89	1,267	1.9	2.5	87	3	2	30
	1989-90	1,363	2.0	2.7	96	2	1	30
Ontario	1985-86	930	1.0	1.4	28	3	2	30
	1986-87	890	1.0	1.3	25	3	4	29
	1987-88	944	1.0	1.4	25	3	5	30
	1988-89	964	1.0	1.4	27	4	5	31
	1989-90	986	1.0	1.4	27	3	5	31
Manitoba	1985-86	207	1.9	2.8	54	2	34	29
	1986-87	205	1.9	2.8	52	2	39	28
	1987-88	236	2.2	3.0	62	1	36	29
	1988-89	227	2.1	2.9	72	1	35	29
	1989-90	236	2.2	3.0	78	3	40	31
Saskatchewan	1985-86	155	1.5	2.1	27	4	61	28
	1986-87	147	1.4	2.0	25	4	58	28
	1987-88	209	2.1	2.9	33	1	51	28
	1988-89	179	1.8	2.5	31	3	52	29
	1989-90	179	1.8	2.5	32	3	54	31

See footnote(s) at end of tables.
Voir note(s) à la fin des tableaux.

Table 11

Sentenced Admissions to Provincial Custody, by Selected Perspectives and Inmate Characteristics, Canada and the Provinces, 1985-86 to 1989-90

Tableau 11

Nombre d'admissions de personnes condamnées, dans les établissements provinciaux, selon certaines perspectives et caractéristiques du détenu, Canada et les provinces, 1985-86 à 1989-90

Province and year / Province et année		Total sentenced admissions / Total des admissions de personnes condamnées	Selected perspectives / Certaines perspectives			Selected inmate characteristics / Caractéristiques du détenu			Per cent less than 18 years of age / Pourcentage moins de 18 ans
			Rate/10,000 total population / Taux pour 10 000 habitants de la population	Rate/10,000 adult population / Taux pour 10 000 adultes	Rate/10,000 adults charged / Taux pour 10 000 adultes inculpés	Per cent female / Pourcentage de femmes	Per cent native / Pourcentage d'autochtones	Median age / Âge médian	
		No nbre							
Newfoundland and Labrador - Terre-Neuve et le Labrador	1985-86	2,286	40	60	1,216	3	4	27	1
	1986-87	1,839	32	48	1,028	3	5	29	-
	1987-88	1,966	35	50	990	4	4	30	-
	1988-89	1,989	35	50	1,012	7	6	29	-
	1989-90	1,821	32	45	959	4	4	30	-
Prince Edward Island - Île-du-Prince-Édouard	1985-86	893	71	100	1,352	3	4	26	4
	1986-87	1,662	131	183	2,892	5	3	29	-
	1987-88	1,547	122	169	2,888	5	3	29	-
	1988-89	1,502	117	162	2,774	6	2	29	-
	1989-90	1,374	106	145	2,670	5	3	29	-
Nova Scotia - Nouvelle-Écosse	1985-86	3,090	35	48	918	4	4	25	1
	1986-87	2,965	34	46	919	4	4	26	1
	1987-88	2,912	33	45	881	4	4	27	-
	1988-89	2,613	30	40	805	5	5	27	-
	1989-90	1,787	20	27	524	4	3	27	-
New Brunswick[1] - Nouveau-Brunswick[1]	1985-86	3,692	52	73	1,503	4	4	26	3
	1986-87	3,610	51	71	1,518	3	4	28	-
	1987-88	3,711	52	72	1,621	4	4	28	-
	1988-89	3,361	47	64	1,523	4	4	28	-
	1989-90	3,078	43	58	1,499	4	5	30	-
Québec	1985-86	18,437	28	38	1,423	6		27	-
	1986-87	16,825	26	34	1,200	7	2	28	-
	1987-88	16,297	25	33	1,109	8[e]		28	-
	1988-89	17,937	27	36	1,234	7	2	29	-
	1989-90	18,870	28	37	1,331	8	2	29	-
Ontario	1985-86	47,792	53	71	1,449	7	9	27	1
	1986-87	45,306	50	66	1,281	7	9	27	-
	1987-88	44,692	48	64	1,227	7	9	27	-
	1988-89	44,060	47	62	1,212	7	10	27	-
	1989-90	44,820	47	62	1,221	8	8	28	-
Manitoba[2]	1985-86	5,314	50	69	1,396	10	54	26	-
	1986-87	6,239	58	80	1,591	9	56	27	-
	1987-88	6,326	59	80	1,759	10	55	25	-
	1988-89	5,120	47	64	1,618	6	44	26	-
	1989-90	3,405	31	43	1,091	7	47	27	-
Saskatchewan	1985-86	6,791[r]	67	95	1,176	8	64	26	2
	1986-87	6,731	67	94	1,063	9	64	25	-
	1987-88	7,870	78	109	1,278	9	66	25	-
	1988-89	7,581	75	105	1,296	10	65	26	-
	1989-90	7,551	75	105	1,364	10	68	26	-
Alberta	1985-86	19,080	81	114	1,711	9	30	26	2
	1986-87	19,227	81	113	1,654	9	30	26	-
	1987-88	20,415	86	120	1,955	9	31	26	-
	1988-89	20,609	86	119	2,034	8	31	26	-
	1989-90	21,395	88	122	2,235	10	31	26	-
British Columbia - Colombie-Britannique	1985-86	10,523	37	49	1,532	5	16	28	-
	1986-87	10,524	36	49	1,564	6	18	28	-
	1987-88	10,231	35	46	1,385	7	19	28	-
	1988-89	9,863	33	44	1,343	8	18	28	-
	1989-90	9,893	32	43	1,213	7	19	29	-
Yukon	1985-86	554	236	340	2,245	6	57	27	1
	1986-87	560	238	341	2,721	6	60	26	-
	1987-88	530	217	308	2,195	7	60	27	-
	1988-89	495	196	277	1,476	6	53	27	-
	1989-90	444	175	254	1,295	7	65	28	-
Northwest Territories - Territoires du Nord-Ouest	1985-86	847	183	268	1,807	6	85	25	1
	1986-87	781	150	244	1,770	5	90	24	-
	1987-88	877	170	278	1,903	6	88	24	-
	1988-89	962[r]	185[r]	301[r]	1,883[r]	6[r]	88	26	-
	1989-90	696	130	210	1,123	5	88	26	-
CANADA	1985-86	119,299[r]	47	64	1,443	7	20	27	1
	1986-87	116,269	46	62	1,362	7	18	27	-
	1987-88	117,374	46	62	1,341	7	22	27	-
	1988-89	116,092	45	60	1,347	7	19	27	-
	1989-90	115,114	44	59	1,337	8	18	28	-

See footnote(s) at end of tables.
Voir note(s) à la fin des tableaux.

Table 17

Probation Admissions, by Selected Perspectives and Offender Characteristics, Canada and the Provinces, 1985-86 to 1989-90

Tableau 17

Nombre d'admissions en probation, selon certaines perspectives et caractéristiques du contrevenant, Canada et les provinces, 1985-86 à 1989-90

Province and year / Province et année		Total probation admissions[1] / Total des admissions en probation[1]	Selected perspectives / Certaines perspectives			Selected offender characteristics / Certaines caractéristiques du contrevenant		
			Rate/10,000 total population / Taux pour 10 000 habitants de la population totale	Rate/10,000 adult population / Taux pour 10 000 adultes	Rate/10,000 adults charged / Taux pour 10 000 adultes inculpés	Per cent female / Pourcentage de femmes	Per cent native / Pourcentage d'autochtones	Median age / Âge médian
Newfoundland and Labrador - Terre-Neuve et le Labrador	1985-86	907	16	24	482	11	2	24
	1986-87	997	18	26	557	13	4	24
	1987-88	925	16	24	466	14	4	26
	1988-89	1,024	18	26	521	14	3	28
	1989-90	1,720	30	43	906	11	1	27
Prince Edward Island - Île-du-Prince-Édouard	1985-86	659	52	73	998	14	..	23
	1986-87	864	52	73	1,155	8	..	27
	1987-88	551	43	60	1,029	14	..	27
	1988-89	553	43	60	1,021	16	..	27
	1989-90	634	49	67	1,232	11	..	27
Nova Scotia - Nouvelle-Écosse	1985-86	2,362	27	37	702	14[e]	2[e]	23
	1986-87	2,676	31	42	829	13[e]	2[e]	24
	1987-88	2,744[e]	31	42	830	13[e]	2[e]	26
	1988-89	2,844[e]	32	43	876	17[e]	4	26
	1989-90	3,252	37	49	965	16	5	26
New Brunswick - Nouveau-Brunswick	1985-86	1,276	18	25	520	13	..	23
	1986-87	1,813	26	35	782	11	..	25
	1987-88	1,413	20	27	617	14	..	25
	1988-89	1,627	23	31	737	13	..	27
	1989-90	1,781	25	34	867	12	..	26
Québec	1985-86	3,787	6	8	292	..	..	
	1986-87	3,931	6	8	280	..	..	
	1987-88	4,276	6	9	291	..	..	
	1988-89	5,658	9	11	389	10	3	26
	1989-90	5,631	8	11	397	11	3	28
Ontario	1985-86	24,555	27	37	745	19	4	26
	1986-87	23,237	25	34	657	19	4	25
	1987-88	24,168	26	35	664	19	4	26
	1988-89	22,699	24	32	624	19	4	28
	1989-90	23,958	25	33	653	19	4	28
Manitoba	1985-86	1,444	14	19	379	17	37	25
	1986-87	1,519	14	19	387	15	39	25
	1987-88	1,841	17	23	512	16	44	25
	1988-89	2,123	20	27	671	16	44	26
	1989-90	2,421	22	30	776	16	38	26
Saskatchewan	1985-86	2,815	26	37	453	20	50	22
	1986-87	2,206	22	31	348	18	50	24
	1987-88	2,431	24	34	395	18	53	24
	1988-89	2,387	24	33	408	19	55	24
	1989-90	2,785	28	39	503	19	56	25
Alberta	1985-86	7,672	33	46	888	18	20	23
	1986-87	6,917	29	41	667	19	21	25
	1987-88	6,319	27	37	605	19	21	25
	1988-89	6,455	27	37	637	19	20	26
	1989-90	7,187	30	41	751	18	21	26
British Columbia - Colombie-Britannique	1985-86	8,373	29	39	1,219	19	18	24
	1986-87	8,275	29	38	1,230	18	17	25
	1987-88	8,201	28	37	1,111	18	17	25
	1988-89	7,820	26	35	1,065	17	16	26
	1989-90	8,981	29	39	1,101	17	15	26
Yukon	1985-86	387	158	225	1,487	18	58	26
	1986-87	200	85	122	972	19	64	25
	1987-88	310	127	180	1,284	12	63	26
	1988-89	294	116	164	877	10	55	28
	1989-90	305	120	174	889	11	60	28
Northwest Territories - Territoires du Nord-Ouest	1985-86	821	158	260	1,557	18	87	23
	1986-87	314	60	98	712	12	88	24
	1987-88	342	66	108	742	..	90	24
	1988-89	339[e]	65	106	884	21	87	..
	1989-90	340	64	102	548	18	91	24
CANADA	1985-86	54,838	22	30	663	18	13	25
	1986-87	52,749	21	28	618	18	13	25
	1987-88	53,521	21	28	612	18	13	26
	1988-89	53,823	21	28	624	17	12	26
	1989-90	58,595	23	30	685	17	12	27

See footnote(s) at end of tables.
Voir note(s) à la fin des tableaux.

APPENDIX 3

Native people must receive fairer treatment from the law

By Jim Harding

Harding is director of Prairie Justice Research at the University of Regina.

The inquest into the death of Marlon Pippin will not put to rest growing concerns about discrimination against native people within the criminal justice system in Saskatchewan.

Native witnesses were not called and the family appeared without legal counsel. Not only that, but an inquest is really not a forum likely to get behind why such a tragedy occurred.

Nor is this the first, nor likely the last, in a series of incidents in Saskatchewan which are contributing to a national refocus on "race relations" and policing.

Last fall, a native protest over the acquittal of two Regina police officers for alleged common assault, prior to the arrest and death of a jailed native man, already reminded us that all was not well in "race relations" in the city's justice system.

This issue was last visible when the City of Regina sponsored a public inquiry in 1983 after allegations from legal aid lawyers and native groups that police dogs were being turned on some native youth.

The accusation, or perception, of a racial bias in the justice system will not disappear, even if these particular newsworthy events are forgotten. There is a growing body of national and provincial knowledge that suggests a deep problem does exist in our justice system.

Work by Prairie Justice Research (PJR) at the University of Regina, as elsewhere in this field of study, supports this view.

Since 1978, PJR has conducted focused research on indigenous people and the criminal justice system, with support from the Ministry of the Solicitor General. Our main findings, and findings elsewhere, are summarized in two main reports — Law and Order for Canada's Indigenous People, and Self-Study of Justice Research About Indigenous People, both 1985.

Findings from reviews of literature and direct research by associates of PJR suggest that discrimination against indigenous people operates at every stage of involvement in the criminal justice system.

Studies have shown that indigenous people are at greater risk of arrest due to more transiency and homelessness, and due to negative attitudes of some police officers. Statutes involving alcohol and motor vehicles have consistently accounted for the vast majority of sentences.

Growing unemployment in northern communities under pressure from corporate developments, such as clear cutting and uranium mining, and among urbanizing native people continue to aggravate these socio-legal problems.

> ***"Jails are again growing overcrowded, primarily with indigenous people."***

Once arrested, further discrimination comes into play. One 1978 study of public drunkenness in Regina found that, of those arrested, 30 per cent of the Indian people and 21 per cent of the Metis people, but only 11 per cent of the non-native people, were actually charged.

Another 1978 study indicated that fines for impaired driving levied against indigenous people, though sometimes smaller, represented a much larger proportion of their incomes than those levied against non-natives. Growing poverty and unemployment among indigenous people continue to contribute to fine defaults and result in additional incarceration.

Studies have consistently shown inequitable access of indigenous people to vital legal resources. An evaluation of an attempt to create a project for native legal counsel in Regina showed how pressures to meet multiple objectives, insecure funding, lack of native control and other problems plague such projects. Abolition of the native court worker program and creation of fees in Saskatchewan's legal-aid plan further aggravated the socio-legal problems of indigenous people in the province.

As early as 1964, an excessive representation of Indian and Metis, especially native women, was found in Saskatchewan's jails. It was clear then that socio-economic issues, particularly poor housing, youth unemployment and alcohol-related problems, contributed to this trend. The trend has accelerated.

A Saskatchewan study in 1980 found that young male treaty Indians were 37 times more likely (and young male Metis and non-status Indians were 12 times more likely) to be incarcerated than non-natives.

Saskatchewan jails are again growing overcrowded, primarily with indigenous people. Based on past experience, prison unrest may occur again as a result of deteriorating conditions.

A 1982 study found a definite lack of probation programs in Canada designed to take into account the particular problems facing the indigenous people so over-represented in jails and prisons.

In view of the ever-growing rate of indigenous people in jail, it can be argued the variety of programs that have attempted to reduce, or alleviate, the racial bias — whether the training of native people as police or attempts at a parallel native justice system — have not been successful in countering the fundamental causes.

These causes are within the structure and ideology of the criminal justice system itself — everything from policing to legal resources, courts and jails. More importantly, the causes are also found in the marginal position of indigenous people in the economy, and the roots of this are in the colonization of British North America.

Until the processes of underdevelopment in Canada are squarely faced, and it is finally admitted that the criminal justice system cannot treat socio-economically rooted "crime" any better than medicine can treat diseases constantly created by environmental degradation, the vicious circle of poverty, crime, rebellion and repression will continue.

It is the solution of these underlying problems, not further criminalization of social issues, that the public policy process in Canada should be emphasizing.

The time is long overdue for federal and provincial governments to co-operate to tackle these problems.

Some of the problems facing native people in Saskatchewan were discussed at the 1987 Canadian Criminal Justice Congress in Toronto. The call last year by the Canadian Bar Association for a separate justice system for indigenous people again focused national attention on this matter. The Marshall inquiry in Nova Scotia brought to light some ways that racial discrimination works within the criminal justice system.

A provincial inquiry in Manitoba will likely reveal the severity of problems facing urban and rural indigenous people in the criminal justice system on the Prairies.

The Ontario inquiry on race relations has already shown that other Canadians — members of immigrant groups — are also at serious risk of discrimination in the criminal justice system.

The call for a province-wide public inquiry by the Saskatchewan Coalition Against Racism (SCAR), in the wake of the Pippin tragedy, is timely.

It is high time for Saskatchewan, with the highest rate of incarceration of indigenous people in Canada, to hold its own commission of inquiry.

The Leader-Post Regina Wed., Mar. 22, 1989

Reader's Commentary

APPENDIX 4

Public Drunkenness in Regina: A Search for Determinants and Solutions by the Saskatchewan Alcoholism Commission. Regina. October. 1980.

This report contains a detailed profile of the 3,368 people arrested for public drunkenness in Regina in 1977. Of course it tells us nothing about those not arrested — those not visible to police, those issued a warning, etc. The most dramatic finding was that nearly nine out of ten of those arrested (86.5%) were male. The Report also notes that studies elsewhere have found the average age of men arrested for public drunkenness to be 42-45 years. In Regina, in 1977, the average age of those arrested for public drunkenness was only 31 years.

There are some important clues about why the age of those arrested was younger than expected. As the Report says "the high unemployment rate among people arrested . . . raises the question of how drinking and unemployment interrelate . . ." (p. 23). Overall the reported unemployment rate for those arrested for public drunkenness was 50%. This is much higher than the official rate in 1977 (an acknowledged underestimation) of 3.4% for Regina. A higher rate of unemployment among single men (57%), who tend to be younger, than among those married (41%) helps explain the youthfulness of the arrested population. This youthfulness reflects the double jeopardy facing men without either work or family as support systems in their life, and how alcohol can begin to fill this social and economic vacuum.

It is well known that unemployment plays havoc with family life. And unemployment more often hits people who have to survive in the unskilled laboring jobs. Eighty-four percent of people with these reported occupations were unemployed at the time of arrest. Furthermore, there were more people from unskilled laboring jobs among the arrested Indian people (64%) and Metis (79%) than [illegible]-native people (32%), which helps explain the overall over-population of native people arrested.

More unemployed (66%) than employed (51%) had other arrests for public drunkenness between 1974-77. And the average number of arrests for the unemployed (10.2) was greater than for the employed (6.4). A larger percentage (71%) of those in unskilled laboring jobs were repeaters than for any other reported occupation. And the number of repeat arrests between 1974-77 for those separated or divorced (13.2), or single (8.2), was much larger than for those married (4.8).

There are few self-help or altruistic services in place for this unemployed, transient, increasingly young male population being arrested for public drunkenness. Yet the need for such groups and services can be clearly argued from the Report. The men arrested, charged and convicted received a longer average jail sentence (16 days) then the women (12 days). The single people sentenced received a longer jail sentence (17 days), as did those separated or divorced (15 days), than those reported as being married (11 days). Though there are some groups and services for women leaving destructive marriages, it is noteable that it was the married (rather than single, separated or divorced) that were greatly over-represented among women arrested.

There was an overall overproportion of native people arrested for public drunkenness in Regina in 1977. The Federal Government's 1978 estimate that 14% of Regina's citizens are of native ancestry (or even an enlarged estimate) is clearly far below the 62% of those arrested who were considered to be of native ancestry.

Though Indian and Metis men made up 58% of the men arrested, Indian and Metis women made up 87% of the women arrested. The percentage of men arrested who were Indian (38%) was much closer to the percentage of women arrested who were Indian (45%). However, the percentage of women arrested who were Metis (42%) was far higher than the percentage of men arrested who were Metis (20%).

It is well known that the Indian Act has discriminated against women, who can lose their Indian status and rights through outmarrying. Overall, women of Indian ancestry are more destitute (more unequal) than men of Indian ancestry. This destitution often forces native women off reserves. It is therefore not surprising to find native women — both with and without Indian status — in larger percentages among those arrested for public drunkenness. The same trend exists for many other arrests and shows up in the extremely high proporation (over 90%) of Indian and Metis women incarcerated in the women's jail in Prince Albert.

The findings alone can not tell us whether there is greater public drunkenness among native people, and/or whether there is discrimination in arresting practices. They can, however, begin to tell us whether there is a discriminatory handling of native people *once arrested*. Once people are arrested you might expect charges for being publicly intoxicated to be laid and to stick on a fairly equal basis. The conviction rate of those charged, for examp[illegible]as high — 82% in 1977 in Regina. But the Report shows that this equal treatment once arrested has not been happening. Of those arrested it notes that 30% of the Indian people, 21% of the Metis people, and only 11% of the non-native people were charged.

The finding that 79% of those arrested aren't charged suggests that the police and drunk tank are being used to fill a vacuum in social services and medical care. This indicates that the police and courts are already decriminalizing public drunkenness and are probably responsive to alternative interventions like treatment. But native people, and Indian people more than Metis, are still far less likely to be treated in this quasi-decriminalized manner. Though their needs for alternatives are greater, they are more likely to be incarcerated and penalized for public drunkenness. Their higher rate of incarceration, in turn, is often used as "proof" that they are more likely to break the law. More jails are built to meet this "demand", probably at greater overall cost to the taxpayer than alternative programs, and the system perpetuates itself.

Without alternatives, the higher unemployment and transiency among native people can be seen to create a greater need for the drunk tank and the jail. Some superficial confirmation of this is shown by the finding that 50% of those *not* charged had repeat arrests, whereas 96% of those charged had repeat arrests; and the added fact that repeat arrests were higher for Indian people (79%) than Metis people (68%), and lower for non-native people (36%). This recidivism and not institutionalized discrimination in the legal system might explain the higher rate of native people being charged for public drunkenness.

The Report, however, also indicated that repeat arrests were higher for the unemployed (66%) than for the employed (51%) and the unemployment rate was high among non-native (43%) as well as Indian (49%) and Metis (60%). Also, the average arrests for non-native people between 1974-77 (7.7) was not much lower than for the Metis (7.9), and these were not that much lower than for Indian people (9.4) or for all people arrested (8.6). Much higher repeat rates existed for the overall unemployed, native *and* non-native (10.2), and for those, overall, who were separated and divorced (13.2). Recidivism therefore cannot fully or even mostly explain the higher rate of Indian and Metis people being charged upon arrest rather than being let go after sobering up.

There is always pressure for government research reports to interpret findings and make recommendations in a way that is palatable to those with bureaucratic and political power. This can restrict the access of the public to quality information and to informed involvement in the discussion and determination of public policy. There are some of these problems with this Saskatchewan government report. It calls for community-based detox centers and shelters and some long-term attention to social and urban planning. The report, however, itself suggests that the drunk tank would still manage most public drunkenness even if its recommendation on detoxication was followed. In a 1975 Toronto study only 9% of these arrested went to detox centers whereas 70% were refused admission due to lack of space. These detox centers found that people needed to stay about 4 days, on average, rather than overnight as in the drunk tank, and the detox system was quickly backed up. Consequently it made no major impact on policing or jailing practices. It is estimated that a tenfold expansion of the Ontario detox system would be required to have such an impact.

Policies that simply try to switch the agencies that manage a population in need, without assessing the needs or the causes of the problems, usually are counterproductive. In Saskatchewan there are only four functioning detox centers. Without incredible political pressure, the government will not create a detox system that is even as comprehensive as the inadequate Ontario one, nor create half-way houses for long-term shelter for people presently being arrested for public drunkenness. It is more likely that it will stick with "alcoholism treatment" programs which have a questionable effect and are highly inappropriate for dealing with the economic and social problems associated with public drunkenness.

It is to the credit of the report that it mentions that "a person in this society has to give up basic freedoms by going to jail in order to get food and shelter." (p. 59). It is not uncommon for some program of government to nullify or contradict another program. The contradiction between the Saskatchewan Human Rights Code, which is supposed to take precedence over all provincial legislation, and the institutionalized discrimination against people of Indian ancestry in the legal system, is one such problem of public policy and social structure requiring scrutiny. There is also the role of the physical expansion of crown corporations in actually aggravating the problem of public drunkenness in Regina.

The report acknowledges that simply tearing down and redeveloping "skid row — and other run down areas . . . would be counterproductive as the problems would likely shift to other areas of the community." (p. 69). It also notes that in 1977 35% of those arrested for public drunkenness had highly unstable living situations — hotels, detox centers, no fixed address, or an out-of-town residence. Since 1977 urban renewal ("removal") has accelerated in downtown Regina. The construction of government crown corporation head offices and the encouragement of private corporate "development" is mainly responsible for this.

No alternative downtown habitats have been created and the pressure on the police and drunk tank for shelter will likely intensify. Six of eleven of the downtown hotels have already been destroyed and another is no longer providing long-term rooms. This is a loss of an estimated 120 living units in the downtown. The Downtown Crisis Housing Foundation is partially aware of the severity of the problem. In a consultant's report it has stated that "a building which would accommodate perhaps ten or twelve men would seem sufficient to meet the current need." This estimate of need was mostly based on census data, which commonly fails to account for this highly transient population, so it is probably a gross underestimation. Furthermore, such a facility could never mitigate the destruction of the familiar, human-scale downtown habitat.

The recommendations of the report present no challenge to overall government policies. The emphasis on community-controlled detox centers sets the stage for government to provide token resources to a few community groups, and appear to have met its political obligations. The need for quality, long-term care for people who live hand to mouth and go in and out of the drunk tank, with a continual loss of human rights, can easily be ignored through this politically expedient approach.

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Taken from Canadian Journal of Criminology, Vol. 25, No. 2, April 1983.

The Leader-Post Regina Wed., Nov. 20, 1991

Chief recommends committee boycott

By TREVOR SUTTER
of The Leader-Post

Saskatchewan Indians and Metis should boycott the province's native justice review committees, says the head of the Assembly of Manitoba Chiefs.

"It's going to do more of a disservice, because people have expectations and this review isn't going to meet them," said Phil Fontaine, while attending a constitutional conference for Prairie treaty Indians in Saskatoon last week.

"People are rightfully going to be able to say it's a bloody whitewash," he said. "It would be far better for people not to participate — to boycott it — and force government to put in place a much broader review."

Manitoba recently completed a three-year review of that province's justice system following the police shooting of a Manitoba native leader and the slow investigation into the murder of native women from La Pas.

The review, which was completed last month, produced a 1,000-page report with about 30 pages of recommendations on on how to improve Manitoba's justice system.

Among the recommendations, the report dealt extensively with the need for an aboriginal justice system.

"In our view, the recommendations represent a blue print for the future," Fontaine said.

Saskatchewan's twin justice reviews — one for Indians and another for Metis — are restricted by their terms of reference and six-month mandates, according to Fontaine.

They also fail to examine specific incidents of racism, such as the shooting death of an Indian in Prince Albert by a white supremacist, he said.

Leader-Post photo by Trevor Sutter

Roland Crowe (left) and Phil Fontaine chat

"What you have in Saskatchewan is really a process that was designed to buy time for (former premier Grant) Devine," Fontaine said. "In six months, you're just going to touch the surface and end up with a very superficial look at the justice system."

The Federation of Saskatchewan Indian Nations (FSIN) and the Metis Society of Saskatchewan (MSS) have been calling for improvements to the justice reviews, but both groups believe a boycott of the process is not the answer.

"If we boycott, what happens?" said Roland Crowe, chief of the FSIN. "People forget about it in a day or two and our problems continue."

He said although the review doesn't meet the expectations of many Saskatchewan Indians, it at least represents a starting point for change.

FSIN and MSS representatives plan to meet with provincial Justice Department officials soon to try and increase the scope of the reviews, which are expected to be completed by Dec. 7.

Gerald Morin, provincial secretary of the MSS, said his group will be pushing for a series of regional workshops and a provincial conference as part of an extended Metis justice review.

"We don't want an inquiry like the one in Manitoba," Morin said. "We already know that problems exist in the justice system and now we have to search for some practical solutions."